

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

In the Matter of	)	
	)	
Reexamination of Roaming Obligations of	)	WT Docket No. 05-265
Commercial Mobile Radio Service Providers	)	

To: Secretary  
(For Further Distribution to the Commission)

REPLY COMMENTS OF COMMNET WIRELESS, LLC

Commnet Wireless, LLC, on behalf of itself and its subsidiaries and affiliates (collectively, "Commnet"), and pursuant to Section 1.415 of the Commission's Rules, hereby submits the following Reply Comments in response to the Commission's *Memorandum Opinion and Order and Notice of Proposed Rulemaking* ("NPRM") herein and the various comments filed by others.<sup>1</sup>

Since electing, in early 2003, to become a 100% roaming provider, Commnet has grown from a primarily analog-only, small-volume carrier into the nation's leading Commercial Mobile Radio Service ("CMRS") carriers' carrier. Commnet now operates CMRS systems (both cellular and PCS) in rural areas across the United States, carrying over a hundred million minutes of voice and data roaming traffic each year. By constructing and operating CMRS systems in rural areas, Commnet effectively extends the reliable service area footprint of virtually all major CMRS carriers into rural America, and brings the benefits of the wireless revolution to remote areas that otherwise would have been passed by. Depending upon demand considerations in a

---

<sup>1</sup> FCC 05-160, released August 31, 2005, *summary published* 70 *Fed. Reg.* 56612, September 28, 2005. The deadline for filing reply comments was extended to January 26, 2006.

particular rural market (including whether there is an unmet need for a particular technology in a given market), Commnet operates analog, TDMA, GSM and/or CDMA cell sites.<sup>2</sup>

### SUMMARY OF POSITION

Commnet opposes the comments of certain carriers that are demanding protection for their revenue streams despite their inefficiencies. The roaming market in general, including the market for roaming in rural areas, has become increasingly efficient and open in recent years, due to the issuance of PCS licenses (which eliminated the former duopoly pricing power of serving carriers)<sup>3</sup> and the advent of intelligent handsets which allowed home carriers to react to market forces and eliminated barriers to entry and exit in the roaming field. No incumbent carrier has any “right” to provide service to another carrier’s customers – the privilege of serving another carrier’s customers must be earned, by offering competitive pricing and high quality service (such as advanced features, adequate capacity, and avoidance of “dead spots”). There is no longer any customer demand for manual roaming, and no regulatory purpose would be served by continuing to require that manual roaming be made available.

The roaming market is not only efficient, it is dynamic, constantly changing in response to thousands of microeconomic market forces. Even if the Commission were able to obtain a precise snapshot of the state of the roaming industry in the first quarter of calendar year 2006, that snapshot would become almost immediately obsolete as market changes continue, and by

---

<sup>2</sup> iDen is the only major technology not operated by Commnet. Because Commnet has no iDen operations, Commnet limits its Reply Comments to carriers licensed under Parts 22 and 24 of the Commission’s Rules, *i.e.*, non-iDen carriers. The iDen-carrier issues are completely unique to those carriers, who operate in a differently structured industry, and the issues pertaining to that different structure should have no bearing whatsoever on the question of what, if any, regulations are appropriate with respect to non-iDen carriers licensed under Parts 22 and 24 of the Rules.

<sup>3</sup> In these Comments, “serving carrier” refers to a carrier providing service to incoming roamers; “home carrier” refers to the carrier to whose service those incoming roamers subscribe, and who, with respect to automatic roaming, is liable to the serving carrier for payment.

the time the Commission readied itself to issue new rules, it would be doing so based upon a stale record. The better course is to allow market forces to carry the day, as there is no market power held by any carrier at this time, and barriers to entry have fallen.

## **DISCUSSION**

### **I. There Is No Undue Market Power; Market Forces Already Protect Competition and Subscribers**

In the realm of roaming, the home carrier is a business, serving customers, and the serving carrier is a supplier of services to the home carrier's business. The arrangement is analogous to a restaurant (the home carrier) and its wholesale meat supplier (the serving carrier). In this analogy, the restaurant patrons are the home carrier's subscribers – and just as the restaurant owner wants to keep his/her patrons satisfied, so too does the home carrier want to keep its subscribers satisfied.

The government would never think of regulating the wholesale price of meat charged to restaurants, or of carving out a portion of the market for certain favored meat suppliers. The government simply sets a quality floor for the meat being supplied, and leaves it to the discretion of the restaurant owner to negotiate the pricing and service quality (*i.e.*, taste) for the meat being bought, as well as to choose from which meat supplier to purchase.

Similarly, the Commission here should refrain from imposing a Soviet-style command economy in the field of roaming. CMRS carriers compete vigorously for their subscribers, and strive to provide their subscribers with the best in service and price, including, among other things, the most favorable options when roaming outside the home carrier's own network. Just as restaurant owners are allowed to choose their meat suppliers (and to change those choices based on new developments in the restaurant supply business), so too must CMRS carriers be

allowed to choose (and change their choice of) preferred roaming partners, based on price and service quality, so as to keep their subscribers satisfied.

As the foregoing discussion indicates, Commnet agrees with the comments of T-Mobile, at pp.4-8, Cingular, at pp.18-29, and Verizon Wireless, at pp. 18-21, and disagrees with the comments of the Rural Telecommunications Group (“RTG”) and the Rural Cellular Association (“RCA”). As Verizon notes, it is a net roaming payer, and thus has every incentive to see reasonable roaming rates. Verizon Comments, p.11.

## **II. The Commission Should Protect Subscribers, Not Particular Carriers**

It is irrelevant that a particular carrier has historically handled the bulk of the incoming roaming traffic in a particular market; such past practices should not convey any sort of “right” to continue to receive the same market share in the future. If a rural carrier wants to keep its historic share of the traffic of incoming roamers, it should try to offer the best service at competitive rates. It should not seek to have the government impose rules on other carriers requiring those other carriers to keep their business with any particular supplier of roaming services.

It is the duty of this Commission to protect *competition*, not to protect any particular competitor. To protect one class of competitors is to skew the market and harm consumers, because the favored competitor knows it will retain its market share despite charging more and providing less.

### **A. There Is No Problem of Asymmetric Roaming Rates**

Asymmetric roaming rates are not a major problem. Such rates were historically a problem during the old analog days, when rural carriers held undue market power and forced urban carriers to accept outrageously high roaming rates, such as the old \$3/day + 99¢/minute

rates that artificially retarded the growth of roaming for years. Because there are at least two national and two other major regional carriers supporting each of the CDMA and GSM technologies, rural carriers have sufficient leverage to obtain symmetrical roaming rates from major carriers.

#### **B. Imposing So-Called “Non-Discrimination” Rules Would Harm the Public**

There are already statutory provisions of the Communications Act of 1934 as amended (“Act”) that protect carriers and subscribers against truly discriminatory or anti-competitive behavior, such as Sections 202, 208, and 251 of the Act, 47 U.S.C. §§ 202, 208 & 251. New provisions that would extend the concept of “discrimination” beyond its traditional reach are simply contrary to the public interest.

Commnet concurs with the T-Mobile Comments (pp.13-15) and Cingular Comments (p.21) -- imposing so-called “non-discrimination” rules in the roaming arena would be disastrous. As in the case of any supplier, those competing for the business of serving roamers often base their proposals on certain volumes. Returning to the restaurant analogy, a restaurant owner may choose to offer to buy all of its wholesale meat from a single vendor, in return for certain extra price concessions and service quality minimums from that meat vendor. When the restaurant owner does so, the result is better quality at fair prices for the restaurant patrons.

The meat supplier, for its part, may be able to offer such pricing (or, for example, to offer that all meat will be US Prime) only because the higher guaranteed volume allows it to spread its fixed costs over a larger number of units. Requiring the meat supplier to offer the same pricing/service quality to every restaurant owner will preclude that meat supplier from offering discounts to any restaurant, to the detriment of restaurant patrons.

Sometimes, a home carrier will be reluctant to guarantee any particular volume of business, especially over the course of a contract that may run for two or three years, because the carrier cannot know how many subscribers it will add over that time, much less how often its subscribers will roam into any particular area. That the home carrier instead offers to program its customers' phones over the life of the contract to favor a particular serving carrier in certain markets, as a way of saying, "if my customer levels hold up, you will get your expected traffic volume" to the serving carrier in return for price/service concessions is a legitimate business practice, and should not be prohibited by government fiat.

Manifestly, these legitimate practices benefit subscribers, and any so-called "non-discrimination" rule would prohibit their continued use, contrary to public policy.

### **III. Replacing Market Forces with Government Dictates Will Require New Tariff-Style Bureaucracies with Their Attendant Costs**

Contrary to the assertions of some commenters that the Commission should force carriers to enter into automatic roaming agreements with their competitors on "reasonable" terms,<sup>4</sup> such an idea is antithetical to the public interest. "Reasonable", of course, is in the eye of the beholder. For example, Commnet's roaming agreements are always drafted as reciprocal agreements, even though Commnet has zero volume of outgoing subscribers roaming onto the systems of other carriers. The rates in these agreements are low, precisely because of the one-way flow of volume, which makes a lower rate beneficial to Commnet's carrier-customers and their subscribers. Those carriers would never desire such low rates if they were going to be forced to accept large volumes of incoming roamers at such low rates, volumes which might require capital expansions in some markets, all to benefit someone with which they compete at the retail level.

---

<sup>4</sup> See, e.g., RCA Comments at pp.4-5; RTG Comments at pp.4-8.

Huge bureaucracies would need to be created, both by the carriers and this Commission, to oversee and to implement any regulations interfering with the freedom of the marketplace. Each carrier would have to establish a new department to review each roaming agreement and to ensure that it comported with all previous agreements and did not trigger any need to offer new terms to some other roaming partner. The Commission would have to establish a new bureaucracy to handle all bilateral roaming agreements (which would have to be filed with the FCC and public, as was the case in the old “tariff” regime), and to review them, the same as the Commission has done historically in the realm of rates. After all, how could a carrier learn that it had been given an inferior and “discriminatory” roaming agreement, unless all roaming agreements entered into by its roaming partner were on file with the FCC and available? As noted in the T-Mobile Comments, p.14, the whole concept promises to stifle innovation while imposing substantial administrative costs.

#### **IV. There Is No Demand for Manual Roaming**

Back in the 1990s, Commnet’s predecessor companies derived a very small percentage of roaming revenues from manual roaming.<sup>5</sup> Although the volume of manual roaming was quite small then, it has now disappeared almost completely. Commnet has not processed any substantial volume of manual roaming calls for several years, even though it continues to offer the service. Basically, the typical creditworthy incoming roamer is a subscriber to some other carrier with which Commnet has a roaming agreement in place. If the roamer is not creditworthy, it is going to be rejected when attempting a manual roaming call.

---

<sup>5</sup> In these Comments, “manual roaming” refers to the type the *NPRM*, p.10, ¶ 22, defines as “the more complex form.” In Commnet’s experience, a host switch always checks first to see if automatic roaming is available before routing any call to a human operator.

If there are still some carriers that derive any significant revenue from manual roaming, or that do not have roaming agreements with most other carriers, then such carriers certainly should be allowed to offer manual roaming. But there is no reason to require carriers to offer manual roaming. Therefore, Commnet concurs fully with the view expressed by everyone from RTG to T-Mobile, Cingular and Verizon, that the Commission should no longer require carriers to offer manual roaming.

### CONCLUSION

There is no “problem” of some carriers having undue market power in the roaming arena; hence, there is no need for new government regulations to “fix” the problem. Whatever problems existed in the old days of duopoly analog-only cellular carriers, new developments in technology coupled with the issuance of new spectrum licenses at 1.9 GHz to spur entry have eliminated those former problems.

The Commission’s duty is to protect subscribers, not particular carriers. No carrier has any inherent “right” to receive business from any other carrier. As with any supplier-purchaser relationship, a carrier that wishes to become a favored supplier must earn that status by competing with other suppliers.

There is no problem relating to asymmetric roaming rates or other discrimination. The advent of digital technology and the removal of regulatory barriers to entry have created an efficient and vigorous marketplace, and thereby eliminated the possibility of such abuses without government intervention.


If the Commission were to prescribe some new “anti-discrimination” regime, the Commission would necessarily have to replicate the former tariff bureaucracies, both governmental and private, that artificially raised retail prices and lowered service quality in the



past. Such a result is contrary to the public interest. Nor is there any problem of large carriers colluding with each other against smaller carriers. The large carriers are in competition with each other for market share. They prefer first to keep their customers on one of their own systems; but failing that, large carriers prefer that their customers roam on a small carrier's system rather than on the system of one of their major competitors. Thus, no regulations are needed in this area either.

Finally, Commnet has not had any volume of manual roaming for some time. Carriers that desire to offer manual roaming should be allowed to do so. However, for Commnet and similarly-situated carriers, retaining the capability to process manual roaming is an unnecessary cost which serves no public purpose. They should not be required to offer manual roaming.

Respectfully submitted,  
COMMNET WIRELESS, LLC

By:   
\_\_\_\_\_  
David J. Kaufman, Its Attorney

January 26, 2006

Brown Nietert & Kaufman, Chartered  
1301 Connecticut Ave. NW, Suite 450  
Washington, DC 20036  
(202)-887-0600